USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/1/12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- against -

VIKTOR KOZENY,

Defendant.

ORDER

05 CR 518 (SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

On February 13, 2009, this Court issued a post-indictment Restraining Order which restrained, *inter alia*, Wells Fargo Bank, N.A. from distributing or otherwise disposing of the proceeds of the sale of Peak House, located at 2137 Red Mountain, Aspen Colorado. On November 19, 2010, petitioners Landlocked Shipping Company ("Landlocked") and Dr. Jitka Chvatik moved to terminate the Restraining Order. Petitioners' motion was denied without prejudice and subject to renewal upon the denial by the Privy Council of the extradition of Viktor Kozeny to the United States. *See U.S. v. Kozeny*, No. 05 CR 518, 2011 WL 1672473 (S.D.N.Y. Apr. 29, 2011).

On March 28, 2012, the Privy Council issued its Judgment deciding against extradition. *See* Judgment of the Privy Council, Privy Council Appeal No. 0073 of 2010, [2012] UKPC 10 (Docket Entry # 300, Ex. A). Although the Privy Council found that it lacked jurisdiction to decide the appeal from the decision of the Court of Appeal of the Commonwealth of the Bahamas, *see id.* ¶ 37, it went on to opine that the offenses on which the Government had requested Kozeny's extradition (Counts 1, 11 and 21) were not offenses upon which extradition could be granted under Bahamian law. *See id.* ¶¶ 53, 55.

On May 30, 2012, Harvardský průmyslový holding, a.s. - v likvidaci ("Harvard Holdings") filed a motion to intervene in the above-captioned criminal proceeding in order to oppose the release of the Restraining Order. Thereafter, on June 4, 2012, Harvard Holdings filed an Order to Show Cause in the Supreme Court of the State of New York, New York County, seeking to temporarily restrain and attach such property within the possession or control of Wells Fargo Bank, N.A. *See Harvardský průmyslový holding, a.s. - v likvidaci v. Viktor Kozeny and Landlocked Shipping Company*, Order to Show Cause, Index No. 651826/2012. On June 4, 2012, Judge Ellen M. Coin entered a restraining order against the Peak House funds pending a hearing on the Order to Show Cause. The hearing was originally scheduled for July 18, 2012, but was adjourned to September 5, 2012.

Given the pendency of these state court proceedings, Harvard Holdings' motion to intervene must be denied as moot. Moreover, the Restraining Order can now be released as it is now clear that Viktor Kozeny will never be extradited from the Bahamas. The rightful ownership of the Peak House funds will be decided in state court, which is the more appropriate forum. The Clerk of the Court is directed to close the motion to intervene filed by Harvard Holdings (Docket Entry # 305) and dissolve the Restraining Order (Docket Entry # 167).

SO ORDERED:

Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
August 1, 2012

- Appearances -

For the Defendant:

Sander Bak, Esq.
Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, NY 10005
(212) 530-5000

For the Government:

Harry Chernoff
Assistant United States Attorney
One Saint Andrew's Plaza
New York, NY 10007
(212) 637-2481

For Landlocked and Dr. Chvatik:

James E. Nesland, Esq.
Law Offices of James E. Nesland, LLC
14252 East Caley Avenue
Aurora, CO 80016
(303) 807-9449

For Harvard Holdings:

Michael D. Nolan, Esq.
Edward G. Baldwin, Esq.
Milbank, Tweed, Hadley &
McCloy LLP
1850 K Street, N.W.
Suite 1100
Washington, D.C. 20006
(202) 263-7524